(Judgement Reserved)

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 2411 (S/S) of 2001
Old Number
Writ Petition No. 19700 of 2000 (SS)

Yogendra Mohan Badoni,
S/o Late Sri T.P. Badoni,
R/o 10/90, Bhaktiyana,
Sri Nagar, Garhwal. **.....Petitioner**

Versus

1. Project Officer, Liquid Nitrogen Plant, Animal Husbandry Department, Sri Nagar, Garhwal.
2. Additional Director, Animal Husbandry Department Gopeshwar, Chamoli.
3. Director, Animal Husbandry Department, U.P., Lucknow.

.....Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri S.N. Babulkar, Sr. Advocate, assisted by Sri Tumul Nailwal, learned counsel for the petitioner and learned standing counsel for State of Uttaranchal on behalf of respondents.

By means of this writ petition, the petitioner has prayed for following reliefs:

(a) issue a writ, order, or direction in the nature of Certiorari to quash the order dated 15.04.2000 passed by respondent no. 1

(b) issue a writ, order, or direction in the nature of Certiorari to quash the order dated 15.04.2000

(Annexure – 1 to the Supplementary Affidavit) terminating the service of the petitioner.

(c) to issue a writ, order or direction in the nature of Mandamus commanding not to give the effect the order dated 15.04.2000.

(d) issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case;

(e) award the cost of the writ petition to the petitioner.

By the impugned order dated 15.04.2000 passed by Project Officer, petitioner was directed to hand over the charge of Plant Operator to one Sri Dinesh Singh Chauhan. Later on petitioner filed supplementary affidavit annexing therein another order dated 15.04.2000 passed by Project Officer (Annexure No. 1 to the Supplementary Affidavit), terminating the services of the petitioner, who was appointed as Plant operator by the then Project Officer. Consequently, petitioner added one more relief by way of supplementary affidavit for quashing of order dated 15.04.2000 passed by respondent no. 1, terminating the services of the petitioner from the post of Plant Operator. This relief has been added by the petitioner as relief no. 1 (a) in the petition.

The submission of the petitioner is that there were four post of Plant Operator / Mechanic vacant in the office of Project Officer, Srinagar, District – Pauri Garhwal. Petitioner has obtained three years Diploma in Electric Engineering from Polytechnic, Srinagar, District –

Pauri Garhwal. On 18.06.1987, respondent no. 1 wrote a letter to respondent no. 2 that there are two vacancies of Plant Operator / Mechanic, which have been approved by the Department and the same are to be filled up and thereafter, process of selection was started by respondent no. 1.

Petitioner was initially engaged as daily wager in the department with effect from 01.08.1994 to 30.09.1994 and again on 13.02.1995 to 30.06.1995. Names of the candidates were invited from Employment Exchange by the respondents and since the petitioner was fully eligible to be appointed as Plant Operator and had, in fact, worked as daily wager in the department his name, was also sent by the Employment Exchange. After being selected as Plant Operator, petitioner was provided appointment vide order 30.06.1995 by the then Project Officer i.e. respondent no. 1. On 04.07.1995, petitioner joined his duties on the post Plant Operator. The appointment of the petitioner was made on regular basis against the permanent vacancy. In the meantime, another person joined as Project Officer, at Srinagar and on 15.04.2000 passed an order terminating the services of the petitioner from the post of Plant Operator with immediate effect without giving any reason and without affording any opportunity of hearing.

Aggrieved with the impugned order, petitioner preferred writ petition before Allahabad High Court and the Allahabad High Court on 28.04.2000 stayed the

operation of order dated 15.04.2000 passed by respondent no. 1 and the petitioner is still continuing on the post.

Counter affidavit has been filed by the respondents and stand taken by the respondents is that the then Project Officer has committed number of irregularities including in making the appointment of the petitioner as the petitioner was not qualified for the post. In the rejoinder affidavit it is specifically stated by the petitioner that there was no such qualification to the effect that the person must be intermediate in science for the post of Plant Operator. The requirement for the post is that candidate must have three years diploma certificate in Electrical / Mechanical / Electronic Engineering from the recognized Polytechnic. Even the letter sent by the respondents to Employment Exchange for sending the names of the candidates for the post, states qualification, as stated above by the petitioner.

Respondents could not show any document, which shows that prescribed qualification for Plant Operator is Intermediate (Science).

Learned counsel for the petitioner has further submitted that petitioner was appointed on 30.06.1995 and his services was terminated by respondent no. 1 on 15.04.2000 after about five years without giving any opportunity of hearing. Respondents have not controverted this fact.

Nowhere, it was stated by the respondents, neither in impugned order nor in the counter affidavit that

petitioner was afforded opportunity of hearing prior to passing the impugned order by which the services of the petitioner, who had worked for about 5 years, have been terminated.

It is well settled law that decision can be taken which will effect the right of the any person without first being informed about the case and giving him / her opportunity to put forward his / her case. Order involving civil consequence must be passed consistently with following the principle of natural justice.

It is not disputed that the no opportunity of hearing was granted to the petitioner by the respondents before passing the impugned order and services of the petitioner have been terminated without affording him opportunity. This is a clear-cut case of Violation of principle of natural justice.

In view of the above discussion, impugned order dated 15.04.2000 passed by respondent no. 1 is quashed. Writ petition is allowed. No order as to costs.

(M.M. Ghildiyal, J)

June 15 , 2006
SKSharma